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7 CFR Ch. VII (1–1–07 Edition)

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees including, but not limited to, timber production.

(c) To determine the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (b)(6) of this section, FSA will consider all relevant factors, including, but not limited to, the location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations, information may be obtained and used from the Federal Emergency Management Agency or any other Federal, State (including State agencies or political subdivisions), or other entity or individual providing information regarding, for example, flood susceptibility for the land, soil surveys, aerial photographs, or flood plain data or other relevant information.

§§ 701.6–701.9 [Reserved]

§ 701.10 Qualifying minimum cost of restoration.

(a) To qualify for assistance under § 701.3(a), the eligible damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.

(b) The Deputy Administrator shall establish the minimum qualifying cost of restoration. Each affected State may be allowed to establish a higher minimum qualifying cost of restoration.

(c) A producer may request a waiver of the qualifying minimum cost of restoration. The waiver request shall document how failure to grant the waiver

will result in environmental damage or hardship to the producer and how the waiver will accomplish the goals of the program.

[69 FR 10302, Mar. 4, 2004; 69 FR 22377, Apr. 26, 2004]

§ 701.11 Prohibition on duplicate payments.

(a) *Duplicate payments.* Participants are not eligible to receive funding under the ECP for land on which the participant has or will receive funding under:

(1) The Wetland Reserve Program (WRP) provided for in 7 CFR part 1467;

(2) The Emergency Wetland Reserve Program (EWRP) provided for in 7 CFR part 623;

(3) The Emergency Watershed Protection Program (EWP), provided for in 7 CFR part 624, for the same or similar expenses.

(4) Any other program that covers the same or similar expenses so as to create duplicate payments, or, in effect, a higher rate of cost share than is allowed under this part.

(b) *Refund.* Participants who receive any duplicate funds, payments, or benefits shall refund any ECP payments received.

[69 FR 10302, Mar. 4, 2004, as amended at 71 FR 30265, May 26, 2006]

§ 701.12 Eligible ECP practices.

(a) Cost-share assistance may be offered for ECP practices to replace or restore farmland, fences, or conservation structures to a condition similar to that existing before the natural disaster. No relief under this part shall be allowed to address conservation problems existing before the disaster.

(b) The practice or practices made available when the ECP is implemented shall be only those practices authorized by FSA for which cost-share assistance is essential to permit accomplishment of the program goals.

(c) Cost-share assistance may be provided for permanent vegetative cover, including establishment of the cover where needed, only in conjunction with eligible structures or installations where cover is needed to prevent erosion and/or siltation or to accomplish some other ECP purpose.

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(d) Practice specifications shall represent the minimum levels of performance needed to address the ECP need.

§ 701.13 Submitting requests.

(a) Subject to the availability of funds, the Deputy Administrator shall provide for an enrollment period for submitting ECP cost-share requests.

(b) Requests may be accepted after the announced enrollment period, if such acceptance is approved by the Deputy Administrator and is in accordance with the purposes of the program.

§ 701.14 Onsite inspections.

An onsite inspection must be made before approval of any request for ECP assistance.

§ 701.15 Starting practices before cost-share request is submitted; non-entitlement to payment; payment subject to the availability of funds.

(a) Subject to paragraphs (b) and (c) of this section, costs will not be shared for practices or components of practices that are started before a request for cost share under this part is submitted with the applicable county FSA office.

(b) Costs may be shared for drought and non-drought ECP practices or components of practices that are started before a request is submitted with the county FSA office, only if:

(1) Considered and approved on a case-by-case basis in accordance with instructions of the Deputy Administrator;

(2) The disaster that is the basis of a claim for cost-share assistance created a situation that required the producer to take immediate action to prevent further losses;

(3) The Deputy Administrator determines that the request for assistance was filed within a reasonable amount of time after the start of the enrollment period; and

(4) The practice was started no more than 60 days before the ECP designation was approved for the applicable county office.

(c) Any action taken prior to approval of a claim is taken at the producer's own risk.

(d) An application for relief may be denied for any reason.

(e) All payments under this part are subject to the availability of funds.

§ 701.16 Practice approval.

(a) Requests shall be prioritized before approval based on factors deemed appropriate by FSA, which include, but are not limited to:

- (1) Type and degree of damage;
- (2) Type of practices needed to address the problem;
- (3) Availability of funds;
- (4) Availability of technical assistance;
- (5) Environmental concerns;
- (6) Safety factors; or
- (7) Welfare of eligible livestock.

(b) Requests for cost-share assistance may be approved if:

- (1) Funds are available; and
- (2) The requested practice is determined eligible.

§§ 701.17-701.20 [Reserved]

§ 701.21 Filing payment application.

Cost-share assistance is conditioned upon the availability of funds and the performance of the practice in compliance with all applicable specifications and program regulations.

(a) *Completion of practice.* After completion of the approved practice, the participant must certify completion and request payment by the payment request deadline. FSA will provide the participant with a form or another manner to be used to request payment.

(b) *Proof of completion.* Participants shall submit to FSA, at the local county office, the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions.

(c) *Payment request deadline.* The time limits for submission of information shall be determined by the Deputy Administrator. The payment request deadline for each ECP practice will be provided in the agreement after the application is approved. Time limits may be extended where failure to submit required information within the applicable time limits is due to reasons beyond the control of the participant.